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FILED

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RICHARD W. WIEKING
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U.S. DISTRICT COURT
NO. DIST. OF CA. S.J.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

James Alan Bush,)	Case No.: C 08-01354 (RS) JF
)	
Petitioner,)	EXHIBIT F
)	
v.)	TRANSCRIPT OF PHONE CONVERSATION
)	BETWEEN DEFENDANT JONATHAN
Crime Scene Investigator James)	HARRINGTON AND PLAINTIFF
Anton, Officer Benjamin Holt,)	
Lieutenant Carl Rushmeyer,)	Date: May 18 th , 2006
Lieutenant Vierra, Officer Jon)	Time: 11:45 PM
Marines, Officer Christopher)	
Fontaine, Officer Michael (aka)	
"Mick") Rose, Officer Devon)	Judge Jeremy Fogel
Klein, and Sunnvyale Department)	
of Public Safety,)	
)	
- and -)	
)	
Long (aka "Kevin") Cao, Daniel)	
Napolitan, Daniel Cortez,)	
Laurene Weber, Robert Bradford)	
(aka "Malnburg, Jr."), Jonathan)	
Harrington, Josh Williams,)	
)	
Respondents.)	
)	

SUMMARY

Relevant excerpts of a transcript of a phone conversation between Defendant, Jonathan Harrington, and Plaintiff, on May 18th, 2006, at 11:45 PM.

TRANSCRIPT

HARRINGTON: What happened last night?

PLAINTIFF: Well, let's see, um...Long and I left for McDonald's, we saw, um, some police cars parked over...right...kinda by the liquor store, in that same parking lot, which is unusual. There's nothing out here except my house, you know, as far as what they need to be watching, and, so, they, uh, were obviously doing that, there. So, we called Bobby and we said, "Now, that looks weird." Not that we had anything to...we're doing anything wrong, per se, but Bobby gets so scared, you know, and sketched out that we wanted to warn him, you know. And, um, so, we drove back and, um, they were all over the neighborhood. So, I thought, "Ugh! I don't think we should be here, Long." Long's like, "Oh, it's no problem. It's no problem." I kept trying to yell at him, you know, "Get outta here! Get outta here!" And, he pulls up to the, uh, fucking driveway and there they are. So, we get out and they say, "Where's Danny?" Well, I told Danny to hit the road along with Bobby. Bobby was still...I don't know why Bobby was still there because he was supposed to hit the road

1 already, too. But, anyway, um, [Danny], uh, wasn't there,
2 and they go, "Can we check?" And, I'm, like, "Yeah, go
3 right ahead." And, they go, "Well, can we have your keys?"
4 And, I said, "Yeah, sure, go ahead," because they're not
5 going to find Danny. Well, unfortunately, then, Bobby jumps
6 out from behind the hallway or some shit and, like, has
7 a knife and, like, won't, like, put it down or, you know,
8 put his hands up or anything, so they asked me to go talk
9 to him; so, I did and he calmed down. I kind of know how
10 to work with him now and, um...but, they arrested him,
11 still, for possession of a deadly weapon and one other
12 charge...I can't remember what it was; me, for under the
13 influence and that was it. So, then, I come home from
14 [inaudible] and Danny comes by maybe a half hour later
15 and he's, um, breaking into the back window. It's already
16 broken; but, I mean, he's was, like, pulling it out of
17 the whole frame and everything. I think he was going
18 to fix it, but I'm not quite sure. But, anyway, um, so, I
19 called them and I said...while I was talking to 'em about,
20 like, where my keys were and everything like that—because
21 those are gone—and reporting my credit cards and iPod
22 with video and digital camera, uh...stolen, um, you know,
23 I mentioned that there was someone coming through. And,
24 then, I called back later and I said, "Oh, no, no, no. So
25 sorry. That was my ex-roommate Danny, blah blah blah..."
26 They sent people anyway. So, Danny and I had been on a

1 walk for almost, like, half an hour or so, but, I...we
2 went our separate ways after we met, like, somewhere near
3 the middle of the park. They picked him up, supposedly-
4 that's what they said-and, they stopped me and did another
5 little drug test thingy and I passed it, so I didn't get
6 arrested again; but, I came pretty close to having two
7 UI's in one 12-hour period, more or less. And, then, I
8 guess, apparently, before all this happened, um, this girl
9 named, Laurene, I think it is, got arrested for under the
10 influence, I think. And, uh, so, everybody just kinda went
11 to jail. [laughs] I mean, like, literally everybody.

12 HARRINGTON: Because...what happened, um...

13 PLAINTIFF: Hold on! One more thing I left out. So, uh, Bobby said
14 Josh stopped by and tried to get him to leave the house
15 when we went to McDonald's. And, then that was it. Okay.
16 Yeah, that's everything.

17 HARRINGTON: When my phone still worked, I got two messages that said
18 that you'd been trying to...from two, like...Danny and
19 somebody else-I don't know if it was Josh or not-um, that
20 said that you were having trouble with Bobby and...and, in
21 regards to leaving your house and, then, um... [laughs]
22 I called Danny to make...to check if that was, you know,
23 true and he said, he wanted to meet me. Um, I came over
24 there the same time as you...you and Long went over
25 towards McDonald's.

26 PLAINTIFF: Yeah.

1 HARRINGTON: And, I saw the same three cops that you guys saw...

2 PLAINTIFF: Okay.

3 HARRINGTON: ...and some chick running across the street. I guess it
4 was that chick.

5 PLAINTIFF: Okay.

6 HARRINGTON: I came back around to make sure, maybe, I could save
7 Danny or you or whoever that chick was running after
8 and then there was only one cop car left--the white one--
9 stopping that chick.

10 PLAINTIFF: Oh, okay.

11 HARRINGTON: So, I left.

12 PLAINTIFF: Oh, okay.

13 HARRINGTON: And, um, Danny got in touch with me a few hours later and
14 asked me to drag him out of the bush that he was stuck in
15 and I did. And, then he ended up going downtown to meet
16 with that chick. Then, I guess he met up with you again;
17 but, I didn't know that you were on a five-hour. I figured
18 that Bobby got busted for something and they...because
19 there was [sic] charges pressed, right? And, they...they
20 decided to go with under the influence again and that
21 you'd be out in five to six hours and you weren't. So, we
22 made a call to make sure that you were alright and then
23 you'd already been released by 7 a.m..

24 PLAINTIFF: I mean, I wasn't supposed to be charged with it again? Oh,
25 you mean the second time?

26 HARRINGTON: No, no. This, uh...this afternoon, uh, it'd been longer

1 than five hours without hearing from anybody or even, you
2 know, uh, or knowing what's going on. And, I'm...was like,
3 well, they don't...they released you by three or four
4 o'clock and it was almost seven...

5 PLAINTIFF: Yep.

6 HARRINGTON: And, so, I made a call to our bondsman and, I was like,
7 "Look, I have no idea what he could possibly be in on. I
8 thought it was gonna be an 'under the influence.' Because,
9 he doesn't do anything wrong in his own home."

10 PLAINTIFF: Right.

11 HARRINGTON: And, um, they said that you'd been released by 7:30 and I
12 was, you know...that was the end of it [and] I went about
13 my night. Because, I'm supposed to be in Santa Barbara.

14 PLAINTIFF: That, pretty much, I mean...more or less...[stutters]...the
15 times are a little off, but, um, yeah, I...I...I'd gotten
16 released, probably around, I don't know [sighs] 1, 1:30.
17 And, then, a couple hours later...I'd say, uh, I was out
18 takin' a walk and they...I saw 'em swooping on to my house
19 and, of course, no one was home. And, then...so, I just
20 turned right around and...of course, they saw me and they
21 caught up to me and did the second test and everything.
22 And, it kinda pissed...you know? It's all just bullshit is
23 what it is and...

24 HARRINGTON: Um, what...so, Danny is incarcerated right now? Do you
25 know anything about that?

26 PLAINTIFF: No, I don't. This is what I was told, so...last night, they

1 said that they were looking for him. They said, "Do you
2 know where he's at?" I said, "No, I don't" and, all that
3 shit. And, uh, they volunteered later what it...what it was
4 they were looking...[sighs]...you know, what it was he had
5 on him that they were looking for and I guess they said,
6 "He has a whole lot of warrants." Well, I talked to Danny.
7 Danny says, "I got two, and they're small." Well, then,
8 when they caught up with me again today, they said, "No,
9 no, no. He doesn't have two. He's got a lot." So, um, and
10 I think they're probably right. I don't know. And, I think
11 they're probably pretty major and I think the quantity's
12 high as well. I don't know this; but, I'm just...the way
13 they kinda said it...

14 HARRINGTON: That's weird because—just on the off, like, for some
15 reason, I don't... Two days ago, I was asked to run a
16 wants-and-warrants and to check it, because he needed help
17 with something...with a bench warrant.

18 PLAINTIFF: Mm-hm...

19 HARRINGTON: And, the only thing that came up was, uh...they were all
20 less than \$5,000 and, um, one was a \$2,000 complaint for,
21 uh, failure to appear on, uh, misdemeanor (under the
22 influence)—the only one that came up...

23 PLAINTIFF: Uh-huh.

24 HARRINGTON: And, um, something to do with the rental car, um, but
25 only to deal with the fact that he didn't have a license
26 at the time...

1 PLAINTIFF: Right. Right.

2 HARRINGTON: ...and that, that the car wasn't physically insured and
3 [inaudible] property, the...almost like theft, but not
4 really. It wasn't like the car theft thing.

5 PLAINTIFF: Uh-huh.

6 HARRINGTON: It was like conspiracy to, uh, to...personal destruction
7 of property...

8 PLAINTIFF: Right.

9 HARRINGTON: ...from the vehicle. And, um, those were supposed to...
10 supposed to be cite-and-release things. So, I guess,
11 um...he was supposed to meet with a lawyer tomorrow and
12 they're going to take \$200 from the fund and just go to
13 the sheriff's department and fingerprint him...

14 PLAINTIFF: Uh-huh.

15 HARRINGTON: It's kinda surprising that that's what they brought him in
16 for. Anyway, that chick...she's gone, correct?

17 PLAINTIFF: She's not what?

18 HARRINGTON: She's gone, correct?

19 PLAINTIFF: Yes.

20 HARRINGTON: Okay.

21 PLAINTIFF: I think so. [laughs] [inaudible] Long saw her leave, I
22 think. She's kinda, a little bit, uh, off-kilter, uh,
23 tonight and yesterday night, especially. So, I was kinda
24 glad to see her bail. You there?

25 HARRINGTON: Yeah, she's...um...she...the main reason that Danny was, was
26 leaving last night...I thought...well, it was brought to me

1 that you were not necessarily trying to get rid of Danny,
2 but...you, you didn't want to make Bobby feel bad by not
3 getting rid of everybody...? But, if that's not true, I
4 mean, that's...

5 PLAINTIFF: No. ... So, they're all supposed to leave, and then all
6 hell broke loose. But, I'll tell you: they're out. They're
7 gone. [laughs] I mean, it's not funny...

8 ...

9 HARRINGTON: Make sure that you, um, you know, realize the situation
10 is: they're actively making it so you cannot sell your
11 home and driving you into the ground even...even further.

12 PLAINTIFF: That's exactly why I kicked...oh, totally, totally. And, I
13 mean, I...it finally, you know...

14 ...

15 PLAINTIFF: ...You know, I didn't even really say they could be
16 roommates. They just did become them...

17 ...

18 HARRINGTON: Danny, solo, as a roommate, would have probably been
19 an alright situation and, um...he definitely just wanted
20 a place to lay his head. He wasn't trying to, uh, be
21 malicious. Um, I don't know once, um...once I find out
22 what's going on with him-if I care to, or if he cares to,
23 you know, uh, call who he's supposed to call, um...I mean,
24 and I'm supposed to, uh, express the...uh, that you do not
25 want to see him there and that you need to get on with
26 stuff.

1 PLAINTIFF: Definitely, yeah.

2 ...

3 HARRINGTON: [chuckles] ...you know, Long...Long's a great guy in some
4 regards; but, um...like, he causes a few more problems
5 than he...than he's worth sometimes for you.

6 PLAINTIFF: Okay.

7 ...

8 HARRINGTON: ...we were told that's, like, that's three different
9 affiliations—three different races—that have come to, uh,
10 not protect you so much; but, to exploit you...

11 PLAINTIFF: Right.

12 HARRINGTON: ...from the same avenue.

13 PLAINTIFF: Exactly.

14 HARRINGTON: Which should, I mean, technically, worry...like, I'm making
15 sure that...I mean: Long being there—that sucks!

16 ...

17 HARRINGTON: I'm not saying that. I'm saying that, right now, you said
18 that you made a report tonight after Danny left.

19 PLAINTIFF: Yeah.

20 HARRINGTON: Now, the three people that have been in the house that...
21 it's gonna come up on Joshua, Bobby or Danny...

22 PLAINTIFF: I used Danny's name, specifically, actually.

23 HARRINGTON: What's that?

24 PLAINTIFF: I used Danny's name, specifically, actually, at first. I
25 didn't mean, I didn't...I didn't use a second or third
26 name, either; I said, it probably was him because, at

1 the time, I only knew that...I didn't know that Josh had
2 actually been in the house. I knew you...you guys only
3 came to the door; but, later, I'm starting to think that;
4 but, I...it will come down to him and Josh, probably, but
5 not because of me, by the way. I'm sorry to interrupt;
6 but, I just wanted to let you know that. I don't implicate
7 Josh in anything, except for one thing, and that was when
8 he, basically, you know...it wasn't the laptop issue I was
9 pissed off about, it was another issue...it was something
10 else he had done on top of that. But, what particularly
11 concerned me about this particular robbery, um, that
12 happened 12 hours ago was the fact that it was all my
13 credit cards—everything I had to access money—um, was
14 [sic] taken. And, then, my vehicle, my last set of keys
15 was taken.

16 HARRINGTON: But, your vehicle wasn't taken?

17 PLAINTIFF: No, no: the vehicle wasn't; but, the keys were. So, I
18 don't have any keys whatsoever to even access the inside
19 of the vehicle.

20 HARRINGTON: Okay. Um, I'll...I'll definitely let you know in case, uh,
21 somebody comes across and sees Josh or sees anybody else,
22 um, uh...and what else I was thinking, um... ...So, the
23 next thing that happens: if somebody was caught using
24 your card—if it's that chick or Danny hid 'em somewhere
25 and he had somebody do something with them or if Josh
26 gets caught with them...

1 PLAINTIFF: Yeah...

2 HARRINGTON: ...you're, you're next plan of attack is, is it too far
3 gone for, um, if I leave a note that says, "Hey, you
4 stupid fucks! Any of you three could have done it-or
5 four..."

6 PLAINTIFF: Yeah...

7 HARRINGTON: ...maybe you guys know somebody who fucking did it. Maybe
8 you guys know for sure that it was something, you know,
9 something completely unrelated, like, in...who [laughs]
10 who's the fall guy or what's, what's the thing? If it ends
11 up being that chick, you're gonna...you're gonna want to
12 prosecute to the fullest and you'll be like, "I can't
13 fucking believe it!" Now, Josh gets caught fucking up
14 in Clear Lake this weekend and he has one of your cards
15 because, you know, somebody gave it to him...

16 PLAINTIFF: Right.

17 HARRINGTON: ...or, he found it where...if Danny is the one who did it,
18 he found it where he left it...I'll go through all the
19 possible scenarios...

20 PLAINTIFF: Right.

21 HARRINGTON: Now, Joshua's caught with that and they do an in-depth on
22 'em and you don't have a chance to not pursue it, like,
23 uh...

24 PLAINTIFF: A criminal matter sometimes takes a life of its own, you
25 know, and the complainant cannot necessarily withdrawal...

26 HARRINGTON: Yeah, now, it, it, it's to the point where you...they're

1 actively trying to figure out who it is against you...

2 PLAINTIFF: Right.

3 ...

4 HARRINGTON: This incident, when you...it was mentioned [that] it might
5 have been Danny...now, Danny...the car is searched, and
6 Danny doesn't have the cards on him: if, if Josh knows
7 where Danny would have hid them, if the girl knows where
8 Danny would have hid them, if Bobby...

9 PLAINTIFF: Well, she said he did-not me. And, so, I just assumed it
10 was him.

11 ...

12 HARRINGTON: ...for something big because you can't pull, pull back
13 the charges. You didn't state that anybody had the right
14 to use it or that you...that you've ever given him, you
15 know...did you give him a chance...I mean, I know when he
16 could use it and when he couldn't use it. I mean, that's,
17 eh...just...

18 ...

19 HARRINGTON: Okay, I'm...okay, then, I'm just making sure that wasn't,
20 because if it's...if Danny's locked up and then nothing's
21 happened to your cards, then you're fine. I just don't
22 want him to try to get, you know, try to get gas and, you
23 know...

24 PLAINTIFF: Well, this is the funny thing: Danny...yeah, there's
25 no...I don't know if you were playing or maybe I just
26 misunderstood you; but, on that: Danny was never arrested

1 for, uh, suspicion of stealing my cards or anything like
2 that. It was...basically, they came here last night and,
3 the very first thing they said to me—because I had asked
4 them why they were here at my house when we drove up—and,
5 they said, "We're looking for Danny." And, I said, "Why?"
6 And, they said, "Well, he has a lot of warrants." So, it
7 was, supposedly, it was all about Danny. More so: when he
8 got caught up at the same time I did—me, for the second
9 time—um, that was the issue. Uh, they had never been—I
10 had reported those things stolen, I nev—I can't...I might
11 have mentioned Danny's name 'cuz I thought, at the time,
12 he probably was the only person here; but, then I heard
13 [that] Josh was here. Then, I heard [that] Laurene was
14 here and Laurene said, uh, Danny definitely did it. So, it
15 just kinda bounced around; but, I kinda envisioned Josh
16 doing it, for some reason. So, I don't know, I don't care.
17 I just want 'em...I don't even want 'em back now because,
18 it's like, I cancelled 'em all—I think and, um, they're no
19 good.

20 HARRINGTON: Okay...

21 PLAINTIFF: But, I mean, the iPod with video, the digital camera, I
22 mean...the reason why I think I finally settled on Danny
23 was that, the digital camera was something he had been
24 eyeballing for...from day one. He mentioned that. And, so,
25 I just kinda envisioned Danny taking that and, then, um,
26 the iPod video: uh, that's kind of a Josh thing, right

1 there; but, you know, Danny wouldn't mind having that and,
2 uh, you know, that's, that's..

3 HARRINGTON: Okay. I...

4 PLAINTIFF: I really hope it wasn't Josh because if it, if it was, I'm
5 just done with him, you know what I mean? I, I...I don't
6 even want to...I, I feel like it's a lost cause.

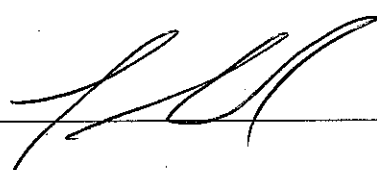
7 HARRINGTON: If it wasn't that fucking chick that caused a rift between
8 four men who, um, were, um, in a mutually beneficial
9 relationship and, uh, then it gets brought down to...or,
10 if Laurene goes and drops the cards to, uh, you know, to,
11 uh, Joshua-if anything happens down the line or, if the
12 camera shows up in Josh's possession...

13 PLAINTIFF: Mm-hm...

14 HARRINGTON: ...even though he didn't take it in the first place, and he
15 goes and tries to give it back to you or something stupid,
16 like, it gets misconstrued because, uh, the way I was told
17 that everybody was in in jail and, uh, Josh is, like, out-
18 of-town.

19
20 VERIFICATION

21 Plaintiff asserts that, to his full knowledge and to the best
22 of his ability, the foregoing transcript is a true and accurate
23 representation of the corresponding audio recording filed as Exhibit "L".

24
25 Signed:  _____

Dated: 5-16-08